

STATE OF MICHIGAN  
COURT OF APPEALS

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BRUCE ARTHUR PATTERSON,

Plaintiff-Appellee,

v

SUSAN I. DULEY-PATTERSON,

Defendant-Appellant.

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UNPUBLISHED

March 8, 2005

No. 251031

Genesee Circuit Court

LC No. 02-241001-DO

Before: Markey, P.J., and Murphy and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right the judgment of divorce in which the trial court awarded plaintiff a judgment lien on certain real property jointly owned by defendant and her three children by an earlier marriage. Defendant also challenges the trial court’s division of property and the factual findings supporting its conclusions. We vacate the judgment lien and remand for entry of a modified lien that is consistent with this opinion and, if the court desires, the implementation of an additional mechanism to secure the amount owing under the judgment. We affirm in all other respects.

The judgment of divorce provides that plaintiff is “granted a judgment lien and mortgage on . . . described realty to secure payment” of a \$63,500 award, which the trial court ordered defendant to pay to plaintiff within ninety days of entry of the judgment. Additionally, the judgment of divorce provides that in the event defendant fails to satisfy her obligation to pay plaintiff the full amount, including interest, within the ninety-day period, the real property shall be sold and defendant “shall receive the first \$63,500 from the proceeds to satisfy the lien and mortgage.” The real property at issue is owned jointly by defendant and her three children. In plaintiff’s brief on appeal, he references the ownership interest in the property as a joint tenancy with rights of survivorship. It is abundantly clear from the language contained in the judgment of divorce that the entire parcel of property and the interests of all four joint owners are subject to the judgment lien and mortgage and potentially a sale. The judgment of divorce does not reflect that defendant’s individual interest in the property is solely in jeopardy.

In *Smela v Smela*, 141 Mich App 602, 605; 367 NW2d 426 (1985), this Court, noting the well-accepted family law principles concerning a court’s jurisdiction in regard to adjudicating the rights of persons other than a husband and wife in a divorce action, stated:

The circuit court has no jurisdiction in a divorce proceeding to adjudicate the rights of any party other than the husband and wife. Michigan divorce statutes do not permit the courts to order conveyance of property or interests to third parties. The only exception is where a third party has conspired with a husband or a wife to defraud the other spouse out of his or her property rights. *Yedinak v Yedinak*, 383 Mich 409; 175 NW2d 706 (1970); *Hoffman v Hoffman*, 125 Mich App 488; 336 NW2d 34 (1983); *Krueger v Krueger*, 88 Mich App 722; 278 NW2d 514 (1979) . . .; *Sabourin v Sabourin*, 67 Mich App 100, 104-105; 240 NW2d 284 (1976).

The trial court, by subjecting all interests in the property to the judgment lien and mortgage, effectively gave plaintiff an interest in the property and adjudicated, or in other words ruled upon, the property rights and interests of defendant's three children. The children now hold title to land which is burdened, as to everyone's interests, and which title could be divested if defendant fails to make payment to plaintiff. Additionally, if a sale occurred, the first \$63,500 would go directly to plaintiff to settle the debt owed by defendant under the judgment without any consideration of the children's interests and the value of those interests. This is not permissible.

In *Midgley v Walker*, 101 Mich 583; 60 NW 296 (1894), our Supreme Court, referencing the issue presented to it, stated that "the sole question is whether the *individual interest* of one of two or more joint tenants is subject to levy and sale upon execution running against such tenant." (Emphasis added). The Court ruled that "[t]he interest of either [joint tenant] is subject to levy and sale on execution." *Id.* at 584. But the Supreme Court noted, however, that the sale "of the interest of one of several, does not affect the interest of the others." *Id.* Furthermore, a charge or judgment created by one cotenant cannot bind the estate of the other joint tenants. *Id.* at 584-585. The *Midgley* Court spoke only of the levy and sale of an individual interest that might be the subject of a creditor's action, the Court did not hold that a creditor of one joint tenant, or the lien holder in regard to a debt owed by one joint tenant, has a right of levy and sale with respect to the entire parcel and the interests of all the joint tenants.

In *Williams v Dean*, 356 Mich 426, 431; 97 NW2d 42 (1959), the Michigan Supreme Court held:

The trial court in the case at bar concluded that the interest of defendant Dean [one of the joint tenants with rights of survivorship] in the property was subject to levy and execution sale at the instance of creditors, and the decrees were entered in accordance with such conclusion. *In each case the right of sale was limited to the interest of Dean.* We are in accord with the action of the circuit court. [Emphasis added.]

Again, the Supreme Court spoke solely of the rights of a creditor to levy and execute in relation to the particular or individual interest of the debtor joint tenant. While the impact on the property rights of the children is of course much greater should a sale occur, the placement of a

lien, in and of itself, which implicates all interests in the property, is an encumbrance that can hinder the children's ability to convey, mortgage, or obtain credit. As such, the decision to place a lien on the property without distinguishing the interests affected is an adjudication of the children's rights.<sup>1</sup>

Here, defendant stands in the shoes of a debtor and plaintiff in the shoes of a creditor, and the trial court could impose a judgment lien and mortgage solely against defendant's interest in the property at issue under the circumstances presented. Of course, the trial court could impose a lien on all of the interests, as was done, but only after providing a legal basis to subject the interests of the children to such a ruling. For example, if the trial court found that the children conspired with defendant to defraud plaintiff relative to the property, the court could subject the interests of all the joint tenants to a judgment lien and a potential sale.<sup>2</sup> The court, however, made no such finding but yet encumbered and endangered the property interests of the children. Accordingly, the trial court improperly adjudicated the rights of the children.

In *Albro v Allen*, 434 Mich 271; 454 NW2d 85 (1990), our Supreme Court undertook an extensive analysis of the characteristics of joint tenancies, both ordinary joint tenancies and joint tenancies specifically granting rights of survivorship. The Court reached the following conclusion:

The interest which was conveyed by the deed to Carol Allen and Helen Albro "as joint tenants with full rights of survivorship" was a joint life estate with dual contingent remainders. The contingent remainder of either cotenant may not be destroyed by any act of the other. Thus, we hold that either cotenant may transfer her interest in the joint life estate and such a transfer has no effect on the contingent remainders. Upon the death of either of the original cotenants, the other cotenant, or any person to whom she has transferred her contingent remainder, takes the whole estate. We further hold that the joint life estate may be partitioned without affecting the contingent remainders. [*Id.* at 287.]

In the case at bar, the absence of a ruling by the trial court particularly finding that the children's interests should be subject to the judgment lien and mortgage because of some fraudulent activity on their part, left the court with the authority and jurisdiction to place a lien solely on defendant's joint interest in the property. Pursuant to *Albro*, any sale of defendant's interest to another person or entity would only involve the sale of her life estate and accompanying contingent remainder, leaving intact the children's life estates and contingent

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<sup>1</sup> Recorded liens necessarily refer to an entire parcel of property, or the legal description of the property, but we see no reason why such liens cannot include language indicating that they pertain only to the individual interest of one of multiple joint tenants.

<sup>2</sup> Third persons do not have to be made parties to the divorce litigation in order for the court to adjudicate their rights, as long as there is some protection of their rights by way of representation or the opportunity to testify. See *Wiand v Wiand*, 178 Mich App 137, 147-148; 443 NW2d 464 (1989).

remainders.<sup>3</sup> The trial court's ruling improperly blurred the line between defendant's interest in the property and the children's interest and cannot withstand scrutiny.

The trial court's ruling granting plaintiff a judgment lien and mortgage, which also created the possibility of a sale of the entire parcel, affected the joint interests held by the children. Thus, we vacate the judgment lien and remand for the court to enter a lien limited solely to defendant's interest in the legally-described property. Because the scope of the lien is reduced, thereby affecting its value as a mechanism to secure the debt, we also permit the court, if it so desires, to grant a lien on another asset or to provide for another method to secure the debt.

Defendant also argues that the trial court should not have granted a judgment lien against her jointly owned property because it was a premarital asset and plaintiff did not contribute anything to the enhancement of its value during the marriage. However, a court may impose a lien against a party's interest in property to secure a divorce judgment. *Walworth v Wimmer*, 200 Mich App 562, 564; 504 NW2d 708 (1993). The lien was only a security interest for the money defendant owed plaintiff; it was not a distribution of the property as a marital asset. *Id.* A circuit court has the power to make any order necessary to fully effectuate its judgments, MCL 600.611, and defendant fails to demonstrate how the court abused that power in this case.

Defendant next argues that the trial court erred by not making sufficient factual findings in ruling that plaintiff's \$80,000 increase in mortgage debt was a joint debt. We disagree. The dispositional rulings in divorce judgments are discretionary, and we will affirm them unless we are left with the firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993). A trial court's findings are sufficient if they are clear and relevant, and it appears that the trial court was aware of the issues in the case and correctly applied the law. *Triple E Produce Corp v Mastronardi Produce, Ltd*, 209 Mich App 165, 176; 530 NW2d 772 (1995). In its opinion, the trial court noted that the parties agreed to take out a home-improvement loan on plaintiff's property in order to remodel it and eventually establish it as their marital home. Defendant admitted that she agreed to the second mortgage on plaintiff's home to make aesthetic changes. Plaintiff testified that defendant's name would have appeared on the loan as a co-signer except for the fact that she had significant debt that would have negated the loan's approval. In light of this evidence, the trial court's conclusion that this was marital debt was not clearly erroneous and its findings were sufficient.

Next, defendant argues that the trial court should have entered a qualified domestic relations order (QDRO) for the payment of the pension differences instead of awarding a lump-sum payment. However, defendant abandons this issue by failing to cite any legal authority or factual support for her position in her brief's two-sentence argument. Defendant may not merely

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<sup>3</sup> If defendant and her children actually have an ordinary joint tenancy, a sale of defendant's interest would sever the joint tenancy, and the remaining joint tenants, i.e., the children, and grantee would become tenants in common, destroying the element of survivorship. *Albro, supra* at 275. Assuming the ownership interests constitute an ordinary joint tenancy, the all-encompassing language of the judgment of divorce nonetheless impacts the children's interests.

announce her position and leave it to us to discover and rationalize the basis for her claims. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

Finally, defendant argues that there were insufficient findings by the trial court on the property division factors. We disagree. To reach an equitable division, the trial court should consider the duration of the marriage; the contribution of each party to the marital estate; each party's earning ability, age, health, needs, and life status; the parties' relationship and conduct; and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996). In this case, the trial court's opinion contains a specific reference to evidence presented at trial and the specific application of this evidence to several of the property division factors, so its findings were not insufficient. *Triple E Produce, supra*. Furthermore, the dispositive ruling was fair and equitable in light of the findings. *Sands, supra* at 34, 36.

Vacated with respect to the judgment lien and remanded for entry of a lien limited solely to defendant's interest in the legally-described property and, if the court desires, the implementation of another mechanism to secure the amount owing under the judgment. Affirmed in all other respects. We do not retain jurisdiction.

/s/ Jane E. Markey  
/s/ William B. Murphy

I concur in result only.

/s/ Peter D. O'Connell